



Law Enforcement

2013 SUBJECT MATTER INDEX

Digest

Law enforcement officers: Thank you for your service, protection and sacrifice.

2013 SUBJECT MATTER INDEX

LED EDITORIAL NOTE: Our annual LED subject matter index covers all LED entries from January 2013 through and including the December 2013 LED. Since 1988, we have published an annual index each December. Also, since establishing the LED as a monthly publication in 1979, we have published several multi-year subject matter indexes: a 10-year index of LEDs from January 1979 through December 1988; a 5-year subject matter index from January 1989 through December 1993; a 5-year index from January 1994 through December 1998; a 5-year index from January 1999 through December 2003; and a 5-year index from January 2004 through December 2008. The 1989-1993, 1994-1998, 1999-2003, and 2004-2008 indexes, as well as monthly issues of the LED starting with January of 1992, are available on the Criminal Justice Training Commission (CJTC) website at: <https://fortress.wa.gov/cjtc/www/>. Click on Publications and Resources, then Law Enforcement Digest. By mid-January of 2014, we will have added to the CJTC the 5-year index for the January 2009 through December 2013.

In this index entries are arranged chronologically within each category and subcategory based on the date of the appearance in the LED (in other words, earlier entries appear before later entries within the categories and subcategories). Citations to court decisions include a citation to the LED as the final part of the entries; the LED citation is abbreviated. For example, the citation in the first entry under "Animal Cruelty," immediately following this note, to "State v. Peterson, 174 Wn. App. 828 (Div. I, May 20, 2013) – September 13:23" means that the Peterson entry appears in the September 2013 LED starting at page 23.

The annual subject matter index has historically appeared in the December LED. Beginning in 2012, the annual subject matter index has been published as a separate document that, like the monthly LEDs, can be found on the CJTC's LED webpage.

ANIMAL CRUELTY (Chapter 16.52 RCW)

First degree animal cruelty statute is not void for vagueness as applied; starvation and dehydration are alternative means of committing first degree animal cruelty; however, evidence is held sufficient to establish horses suffered dehydration causing substantial and unjustifiable pain as result of defendant's neglect; trial court has authority to order defendant to reimburse county for cost of caring for horses. State v. Peterson, 174 Wn. App. 828 (Div. I, May 20, 2013) – September 13:23

ARREST, STOP AND FRISK (See also “Searches” topic)

3 holdings: (1) Terry seizure of witness/suspect was reasonable; (2) arrest was lawful under RCW 10.31.100 because officer had probable cause as to harm to person and/or taking of personal property; (3) but strip search at jail violated chapter 10.79 RCW because suspect’s mere nervousness did not justify it, and there was no supervisor approval. State v. Barron, 170 Wn. App. 742 (Div. III, Sept. 18, 2012) – January 13:14

A 2-1 majority concludes that: (1) delay in frisking suspect undercuts government’s argument that frisk was justified by reasonable belief of danger; and (2) in any event, government failed to present evidence to show that lifting suspect’s shirt was done for safety reason. United States v. I.E.V., 705 F.3d 430 (9th Cir., Nov. 28, 2012) – February 13:07

Seizure, not mere social contact, occurred where officer’s accusation of criminal activity was followed by his request that teens voluntarily empty their pockets; also, community caretaking argument based on truancy law rejected because evidence fails to support it. State v. Guevara, 172 Wn. App. 184 (Div. III, Dec. 6, 2012) – February 13:09

No pretext in “mixed motive” traffic stop where the primary motive is the officer’s desire to investigate a possible DUI, but officer also consciously decides to make stop to address minor traffic violation. State v. Arreola, 176 Wn.2d 284 (Dec. 20, 2012) – March 13:07

In night-time, shots-fired response, reasonable suspicion supports Terry stop of spotlighted possible gang member driver wearing red in blue-colors rival gang area and driving quickly down a rutted alley. State v. Moreno, 173 Wn. App. 479 (Div. III, Feb. 12, 2013) – April 13:15

Ninth Circuit will reconsider decision that held that federal officers lacked reasonable suspicion of smuggling of illegal aliens or of drugs. On April 25, 2013, the Ninth Circuit withdrew the 3-judge panel’s Valdes-Vega decision reported in the December 2012 LED. See United States v. Valdes-Vega, 685 F.3d 1138 (9th Cir., July 25, 2012) Dec 12 LED:12– June 13:14

Arrest by officer who was not in the observation post and did not see gross misdemeanor violation of Seattle drug-loitering ordinance held not to meet RCW 10.31.100 misdemeanor-presence rule; also, fellow-officer or police team rule does not apply such as to make arrest lawful under RCW 10.31.100’s misdemeanor-presence requirement. State v. Ortega, 177 Wn.2d 116 (March 21, 2013) – June 13:19

Fourth Amendment ruling under California v. Hodari D. is that gun that suspect tossed before he complied with police seizure order is admissible even though the seizure order was based on an earlier unlawful police search; result would be different under the Washington constitution. United States v. McClendon, 713 F.3d 1211 (9th Cir., April 19, 2013) – July 13:13

Case must go to jury trial on whether: (1) Terry seizure violated Ninth Circuit’s Fourth Amendment ruling in Grigg limiting seizures for completed misdemeanors; (2) officer’s pulling of Taser in contacting suspect was justified; and (3) arrest of cursing suspect was lawful. Johnson v. Bay Area Rapid Transit District, 724 F.3d 1159 (9th Cir., July 30, 2013) – October 13:09

ASSAULT AND RELATED OFFENSES (Chapter 9A.36 RCW)

Sufficient facts to go to a jury in third degree assault prosecution where nine-year-old took gun belonging to his mother's boyfriend to school and accidentally shot a classmate. State v. Bauer, 174 Wn. App. 59 (Div. II, March 8, 2013) – July 13:24 Status: The Washington Supreme Court is reviewing the case.

Court of Appeals finds sufficient evidence to convict defendant of (1) assault in the third degree for reaching toward a park ranger, and (2) resisting arrest, even where officer did not formally say “you are under arrest.” State v. Calvin, ___ Wn. App. ___, 302 P.3d 509 (Div. I, May 28, 2013) – September 13:20

Evidence of premeditation held sufficient to support first degree murder conviction in death of spouse; also, under a transferred intent theory, evidence also held to support second degree assault conviction for injury to daughter who had tried to block fatal attack. State v. Aguilar, 176 Wn. App. 264 (Div. III, Aug. 20, 2013) – November 13:24

ATTORNEY-CLIENT PRIVILEGE

Article: Inadvertent law enforcement agency recording of attorney telephone calls in violation of attorney-client privilege. – February 13:02

Detective's conduct in listening to several telephone conversations between a defendant and his attorney was egregious misconduct giving rise to a presumption of prejudice; however, under the unusual circumstances of this case, the presumption is overcome. State v. Pena Fuentes, 172 Wn. App. 755 (Div. I, Jan. 14, 2013) – March 13:15 Status: The Washington Supreme Court is reviewing the case.

BURGLARY (Chapter 9A.52 RCW)

Evidence sufficient to establish first degree burglary where one of the defendants carried a shotgun, stolen from the victim, to a waiting vehicle. State v. Hernandez/Rivera/Delacruz, 172 Wn. App. 537 (Div. II, Dec. 26, 2012) – March 13:20

CIVIL LIABILITY

Civil Rights Act lawsuits

Ninth Circuit orders rehearing en banc in Dahlia v. Rodriguez. Dahlia v. Rodriguez, 689 F.3d 1094 (9th Cir., Aug. 7, 2012) – January 13:06 Status: The en banc decision (not reported in the LED) has been issued and can be found at Dahlia v. Rodriguez, ___ F.3d ___, 2013 WL 4437594 (9th Cir., Aug. 21, 2013)

Ninth Circuit panel holds (1) delay transporting bleeding victim from crime scene violated due process; (2) detaining witnesses for four hours was unlawful seizure; (3) force against witness was excessive; (4) supervisors present but not taking charge nonetheless may be liable; (5) Indian tribe paramedics do not get sovereign immunity. Maxwell v. County of San Diego, 697 F.3d 941 (9th Cir., Sept. 13, 2012) – January 13:06. Note: The April 2013 LED (at page 3) reported (1) that on February 14, 2013 the majority and dissenting opinions in Maxwell were revised in minor respects but not materially as to the essential analysis and result; and also (2) that all requests for rehearing were denied. See entry below this subtopic.

2-1 ruling favors officers who repeatedly Tased combative man who was performing violent exorcism on his 3-year-old granddaughter, and who had her in a chokehold. Marquez v. City of Phoenix, 693 F.3d 1167 (9th Cir., Sept. 11, 2012, amended Oct. 4, 2012) – January 13:08

Warrantless entry into curtilage (high-fence-and-gate-enclosed front yard) in gang neighborhood in hot pursuit of suspect where probable cause to arrest was for only disobeying order to stop was not justified under either exigent circumstances or emergency exceptions to the warrant requirement. Sims v. Stanton, 706 F.3d 954 (9th Cir., Dec. 3, 2012, amended Jan. 16, 2013) – February 13:03; March 13:04. Note: The January 2014 LED will contain an entry reporting the United States Supreme Court's reversal of the Ninth Circuit decision in Stanton on the issue of qualified immunity.

Qualified immunity granted in lawsuit attacking use of Taser in 2006 in making gross misdemeanor arrest; court holds that Ninth Circuit 2010 Bryan v. McPherson decision supports granting the officer qualified immunity; Court also holds that state law supports use of reasonable force to make an arrest for a misdemeanor or gross misdemeanor. Strange v. Spokane County, 171 Wn. App. 585 (Div. III, Oct. 30, 2012) – February 13:12

Qualified immunity denied to officers who broke out driver's side window of car reported stolen and pulled the suspect out through it; the jury must decide whose story to believe as to whether plaintiff was trying to follow the officers' orders. Coles v. Eagle, 704 F.3d 624 (9th Cir., Dec. 5, 2012) – March 13:05

Massachusetts prosecutor and other state officials entitled to absolute immunity for decision not to extradite offender who subsequently commits murders in Washington. Slater v. Clarke, 700 F.3d 1200 (9th Cir., Nov. 19, 2012) – March 13:06

Rehearing granted in "disruptive behavior" Civil Rights Act case. Acosta v. City of Costa Mesa – April 13:06 Note: See entry below this subtopic for revised 9th Circuit decision, reported in July 2013 LED.

Majority and dissenting opinions in Maxwell case revised slightly but not materially, and court denies reconsideration in case where officers are faulted for, among other things, delay in getting shooting victim transported for medical help. Maxwell v. County of San Diego, 708 F.3d 1075 (9th Cir., Feb. 14, 2013) – April 13:03. See entry above this subtopic.

Prison officials entitled to qualified immunity in case involving contraband watch. Chappell v. Mandeville, 706 F.3d 1052 (9th Cir., Jan. 31, 2013) – April 13:03

Issue of material fact precludes summary judgment on Eighth Amendment claim based on correctional officers' use of pepper spray; summary judgment appropriate on Fourteenth Amendment equal protection claim based on denial of religious vegetarian breakfast. Furnace v. Sullivan, 705 F.3d 1021 (9th Cir., Jan. 17, 2013) – April 13:08

Qualified immunity for police officer where the officer shot and wounded suspect who had violated no contact order, who was believed to be suicidal, who ignored orders to stop vehicle, and who drove at a high rate of speed toward officer and others, all of whom were on foot. Gallegos v. Freeman, 172 Wn. App. 616 (Div. I, Jan. 7, 2013) – April 13:23

In a reversal of its prior opinion, 3-judge panel of the Ninth Circuit holds that an officer who fatally shot a driver that had rammed her vehicle into police vehicles at the end of a high speed chase is not entitled to qualified immunity from due process-based liability. A.D. v. California Highway Patrol, 712 F.3d 446 (9th Cir., April 3, 2013) – June 13:14

Probable cause to arrest for violation of noise ordinance does not preclude plaintiff's First Amendment Free Speech claims based on alleged retaliatory booking. Ford v. City of Yakima, 706 F.3d 1188 (9th Cir., Feb. 8, 2013) – June 13:16

“Disruptive behavior” element of otherwise overbroad ordinance on city council meeting behavior does not save ordinance from Free Speech challenge in light of the court doctrine regarding severance; but qualified immunity granted to officers based on rulings of probable cause to arrest and no excessive force. Acosta v. City of Costa Mesa, 718 F.3d 800 (9th Cir., May 3, 2013) – July 13:12

No qualified immunity for officers who use chokehold, apply pepper spray, and apply significant knee pressure to the back of the non-resistant brother of a person they are attempting to arrest on a warrant. Barnard v. Theobald, 721 F.3d 1069 (9th Cir., July 1, 2013) – September 13:07

Prison officials are entitled to absolute immunity from suit when carrying out facially valid court order. Engebretson v. Mahoney, 717 F.3d 693 (9th Cir., May 30, 2013) – August 13:10

Ninth Circuit panel rules in favor of city in use of deadly force case involving non-compliant motorist attempting to drive away with officers inside and outside of the vehicle. Gonzalez v. City of Anaheim, 715 F.3d 766 (9th Cir., May 13, 2013) – September 13:11

Issues of material fact regarding whether man who was fatally shot on his patio posed an immediate threat to officers preclude summary judgment on excessive force claim. George v. Morris, 724 F.3d 1191 (9th Cir., July 30, 2013) – October 13:03

Case must go to jury trial on whether: (1) Terry seizure violated Ninth Circuit's Fourth Amendment ruling in Grigg limiting seizures for completed misdemeanors; (2) officer's pulling of Taser in contacting suspect was justified; and (3) arrest of cursing suspect was lawful. Johnson v. Bay Area Rapid Transit District, 724 F.3d 1159 (9th Cir., July 30, 2013) – October 13:09

Trial ordered in case involving Tasing of allegedly obstructing bystander who did not back up when ordered to do so. Gravelet-Blondin v. [Named Officer] and City of Snohomish, 728 F.3d 1086 (9th Cir., Sept. 6, 2013) – November 13:10 Status: The law enforcement defendants are seeking United States Supreme Court review.

Threatening statements made by student are not entitled to free speech protection. Wynar v. Douglas County School Dist., 728 F.3d 1062 (9th Cir., Aug. 29, 2013) – November 13:12

Lawsuits based on negligence

To prove “special relationship” between crime victim and government as exception to “public duty doctrine,” 911 operator's statements to caller need not be shown by

victim/plaintiff to have been false or inaccurate. Munich v. Skagit Emergency Communications Center (and others), 175 Wn.2d 871 (Nov. 1, 2012) – January 13:10

Duty of police in negligence case to protect a victim from a criminal cannot be based on their mere failure to act where they have no special relationship with the victim or criminal; Seattle PD officers did not engage in an affirmative act that would create a duty because they did not create a new risk but instead only failed to eliminate risk by not picking up shotgun shells left on ground by an unknown other person. Robb v. City of Seattle, 176 Wn.2d 427 (Jan. 31, 2013) – April 13:10

Washington State Criminal Justice Training Commission's immunity statute, RCW 43.101.390, receives broad application in dismissal of basic law enforcement academy student police officer's claim against WSCJTC for injury. Ent v. Washington State Criminal Justice Training Commission, 174 Wn. App. 615 (Div. I, April 29, 2013) – August 13:22

In civil suit pitting private parties, dangerous dog ordinance is interpreted by 2-1 majority to also make County subject to liability based on "failure to enforce" exception to "public duty doctrine." Gorman v. Pierce County, 176 Wn. App. 63 (Div. II, August 13, 2013) – October 13:21

Public duty doctrine does not bar lawsuit for negligence in service of an anti-harassment order; jury verdict against city upheld. Washburn v. City of Federal Way, ___ Wn.2d ___, 310 P.3d 1275 (October 17, 2013) – December 13:06

Lawsuits based on theories other than Civil Rights Act or negligence

Claim for wrongful termination in violation of public policy is allowed to proceed notwithstanding existence of Public Employees Relations Commission (PERC) remedy. Piel v. City of Federal Way, 177 Wn.2d 604 (June 27, 2013) – September 13:13

CJTC LED INTERNET PAGE

Announcement: Article on "Eyewitness identification procedures: legal and practical aspects" has been updated as of October 25, 2012 and is available on the Criminal Justice Training Commission's Internet LED page under "Special Topics" – January 13:02

Announcement: 2012 edition of the Washington "Prosecutors' Domestic Violence Handbook," including a "police investigation" appendix, is now available on the website for the Washington Association of Prosecuting Attorneys – January 13:03

Announcement: Beginning with the May 2013 LED, the WSCJTC will also include a link to the most recent LED edition in the "Weekly Training Announcement" e-mail, which is sent by the Advanced Training Division, specifically Leanna Bidinger, Statewide Regional Training Coordination/Leadership Program Manager. Agencies may wish to ask that their training coordinators forward the link to officers. – June 13:02

Announcement: Materials by John Wasberg addressing several subject areas have been updated through July 1, 2013 and are available on the Criminal Justice Training Commission's Internet LED page under "Special Topics." – September 13:04

DEPORTATION FOR CRIMINAL OFFENSES

Conviction of use of drug paraphernalia, RCW 69.50.412, is a deportable offense under federal law. United States v. Osequera-Madrigal, 700 F.3d 1196 (9th Cir., Nov. 19, 2012) – March 13:07

DISCOVERY OF EVIDENCE UNDER CRIMINAL COURT RULES (See also topic “Due Process, Including Brady Requirements on Government”)

Failure of prosecution to disclose un-redacted training and performance records of narcotics detection canine constitutes discovery violation. United States v. Thomas, 726 F.3d 1086 (9th Cir., Aug. 8, 2013) – November 13:03

DNA PROFILE DATABASES (See also topic “Searches” under subtopic “Privacy Expectations, Scope of Constitutional Protections”)

Maryland statute authorizing collection of DNA from all adults arrested for serious felonies survives Fourth Amendment constitutional challenge. Maryland v. King, ___ U.S. ___, 133 S. Ct. 1958 (June 3, 2013) – July 13:03

Government’s continued retention of offender’s blood sample, taken for purposes of obtaining a DNA profile, once he had completed his term of supervised release, is reasonable under all of the circumstances for purposes of federal court rule. United States v. Kriesel, 720 F.3d 1137 (9th Cir., June 28, 2013) – September 13:09

DOMESTIC VIOLENCE (INCLUDING NO CONTACT ORDERS)

Check next to “NCO” box on judgment and sentence is sufficient to extend pretrial no contact order upon conviction. State v. Luna, 172 Wn. App. 881 (Div. III, Jan. 17, 2013) – April 13:21

Juvenile court has authority to issue a domestic violence no contact order for the statutory maximum time period, even if the result is that the no contact order will remain in effect beyond the juvenile’s eighteenth birthday. State v. W.S., ___ Wn. App. ___, 309 P.3d 589 (Div. I, August 19, 2013) – October 13:21

DOUBLE JEOPARDY

No double jeopardy in charging and convicting defendant of third degree theft for stealing a purse and six counts of second degree theft for stealing credit cards from wallet inside the purse. State v. Lust, 174 Wn. App. 887 (Div. III, May 21, 2013) – September 13:22

DRIVER’S PRIVACY PROTECTION ACT (FEDERAL)

Attorney’s solicitation of prospective clients falls outside the limit of the exemption from federal Driver’s Privacy Protection Act (DPPA) liability for obtaining information for use in connection with judicial and administrative proceedings. Maracich v. Spears, ___ U.S. ___, 133 S. Ct. 2191 (June 17, 2013) – September 13:05

DUE PROCESS, INCLUDING BRADY REQUIREMENTS ON GOVERNMENT

Ninth Circuit concludes that an internal administrative investigation that is complete, but for which no findings have been issued, is nonetheless favorable to defendant for

purposes of Brady; however, failure to disclose did not create reasonable probability that verdict would be different. United States v. Olsen, 704 F.3d 1172 (9th Cir., Jan. 8, 2013) – May 13:17

Prosecutor's failure to disclose impeachment evidence violated Brady. Milke v. Ryan, 711 F.3d 998 (9th Cir., March 14, 2013) – June 13:15

Under constitutional due process protection, first degree animal cruelty statute is not void for vagueness as applied. State v. Peterson, ___ Wn. App. ___, 301 P.3d 1060 (Div. I, May 20, 2013) – September 13:23

Police canine's prior misidentifications constitute Brady material, knowledge of which is imputed to prosecutor; failure to disclose held to have prejudiced defendant. Aguilar v. Woodford, 725 F.3d 970 (9th Cir., July 29, 2013) – November 13:06

ELECTRONIC SURVEILLANCE AND RECORDING (Chapter 9.73 RCW)

Recording of one-on-one kitchen conversation with brother-in-law by man who suspected brother-in-law of molesting man's daughters held admissible under Chapter 9.73 RCW on rationale that conversation was not "private"; also, other-crimes evidence held admissible under ER 404(b) where uncharged child molesting showed common scheme or plan. State v. Kipp, 171 Wn. App. 14 (Div. II, Oct. 2, 2012) – February 13:20
Status: The Washington Supreme Court is reviewing this decision.

EVIDENCE LAW

Under appropriate circumstances, gang-related evidence may be introduced to establish motive, intent, plan or preparation; 2-1 majority holds that present case presents such circumstances. State v. Embry, Morgan and Parker, 171 Wn. App. 714 (Div. II, Oct. 30, 2012) – January 13:23

Other-crimes evidence held admissible under ER 404(b) where uncharged child molesting showed common scheme or plan. State v. Kipp, 171 Wn. App. 14 (Div. II, Oct. 2, 2012) – February 13:20

EXCESSIVE FORCE (See "Civil Liability" topic)

FIFTH AMENDMENT RIGHT AGAINST SELF-INCRIMINATION (WHERE LAWFULNESS OF AN INTERROGATION IS NOT AT ISSUE) (See also topic "Interrogations and Confessions")

Un-Mirandized suspect's selective silence with no express assertion of Fifth Amendment rights during non-custodial and otherwise non-coercive questioning by government investigators may be used against defendant in a criminal prosecution. Salinas v. Texas, 537 U.S. ___, 133 S. Ct. 2174 (June 17, 2013) – August 13:02

FORCE USED BY LAW ENFORCEMENT (See "Civil Liability" topic)

FORGERY (RCW 9A.60.020), FRAUD AND SIMILAR OR RELATED CRIMES

Mere possession is insufficient evidence that defendant possessed fake social security card and fake permanent resident card with intent to injure or defraud, and thus

insufficient evidence to convict defendant of forgery. State v. Vasquez, 178 Wn.2d 1 (July 25, 2013) – October 13:16

FREEDOM OF RELIGION (FIRST AMENDMENT)

Parolee is entitled to damages based on First Amendment religion violation for being required, as a condition of parole, to attend a faith-based drug treatment program that required that he acknowledge a higher power. Hazle v. Crofoot, 727 F.3d 983 (9th Cir., Aug. 23, 2013) – November 13:15

FREEDOM OF SPEECH (FIRST AMENDMENT)

No First Amendment protection for false anthrax mailings. United States v. Keyser, 704 F.3d 631 (9th Cir., Dec. 6, 2012) – March 13:04

Threatening statements made by student are not entitled to free speech protection. Wynar v. Douglas County School Dist., 728 F.3d 1062 (9th Cir., Aug. 29, 2013) – November 13:12

Evidence held sufficient (1) to establish “true threat” in email communications to Governor and (2) to convict defendant of making threats against the Governor and her family. State v. Locke, 175 Wn. App. 779 (Div. II, August 6, 2013) – November 13:17

IDENTIFICATION PROCEDURES: PHYSICAL LINEUPS, PHOTO LINEUPS, AND SHOWUPS

Defendant loses challenge to eyewitness identification testimony, both (1) because detective acted reasonably and (2) because police were not responsible for viewing by witness of defendant in media reports. State v. Sanchez, 171 Wn. App. 518 (Div. III, Oct. 30, 2012) – January 13:21

Washington Supreme Court declines to adopt a blanket rule requiring cross-racial eyewitness identification instruction. State v. Allen, 176 Wn.2d 611 (Feb. 8, 2013) – March 13:12

IDENTITY THEFT (Chapter 9.35 RCW)

Corporation is “person” for purposes of identity theft; court rejects vagueness challenge. State v. Evans, 177 Wn.2d 186 (April 11, 2013) – June 13:25

IMPLIED CONSENT, BREATH AND BLOOD TESTS FOR ALCOHOL (RCW 46.20.308)

Commercial driver’s license (CDL) language in implied consent warnings, given to drivers who hold a CDL and are stopped while driving their personal vehicles, is not inaccurate or misleading; statute requiring the Department of Licensing to continue a hearing where a CDL is at issue and officer does not appear does not violate due process or equal protection. Martin v. Department of Licensing, 175 Wn. App. 9 (Div. II, April, 30, 2013, publication ordered June 19, 2013) – September 13:18

There is no blanket requirement that the prosecution introduce a statement of uncertainty for each breath alcohol concentration (BAC) test in DUI cases. State v. King County District Court, West Division, 175 Wn. App. 630 (Div. I, July 29, 2013) – October 13:17

Note: Revised DUI arrest report forms. – November 13:03

INDIANS (NATIVE AMERICANS) AND LAW ENFORCEMENT

Issuance and execution of search warrant on tribal trust land did not infringe on tribal sovereignty where State had jurisdiction over theft occurring on fee land within the borders of Indian reservation, and where no federal statute or tribal procedural restriction applies. State v. Clark, 178 Wn.2d 19 (July 25, 2013) – October 13:14

INITIATIVE POWER OF MUNICIPALITIES

Although city clerks have a mandatory duty to transmit ordinance to the county auditor, the court denies action seeking to compel city clerk to do so because it would have been useless under the facts of this case (traffic camera initiative). Eyman v. McGehee, 173 Wn. App. 684 (Div. I, Feb. 19, 2013) – July 13:25

INTERROGATIONS AND CONFESSIONS

Habeas corpus review: Because the rule for habeas corpus review does not allow prisoner to raise the 2004 Missouri v. Seibert decision regarding use of an improper two-step Mirandizing process, Ninth Circuit panel revises its earlier ruling that was based on Seibert. Thompson v. Runnels, 705 F.3d 1089 (9th Cir., Jan. 24, 2013) – March 13:03

Miranda-based initiation-of-contact bar was not triggered where suspect in continuous custody asserted right to attorney under Canadian “charter” to Canadian officers who were not agents of Washington officers, so Washington officers lawfully got Miranda waiver. State v. Trochez-Jimenez, 173 Wn. App. 423 (Div. I, Feb. 12, 2013) – April 13:19
Status: The Washington Supreme Court is reviewing the case.

Habeas corpus review standard requires rejection of prisoner’s argument that she was in custody for purposes of Miranda when interrogated for nearly four hours in the dead of night at a police station located thirty minutes from her home. Dyer v. Hornbeck, 705 F.3d 1134 (9th Cir., Feb. 6, 2013) – May 13:12

Confession of mildly mentally retarded suspect is not involuntary under the facts of this case. United States v. Preston, 706 F.3d 1106 (9th Cir., Feb. 5, 2013) – May 13:14 Status: On August 14, 2013, the Ninth Circuit vacated the February 5, 2013 opinion in United States v. Preston, and the case will now be reviewed by an 11-judge panel, and a new opinion will be issued.

After waiving his Miranda rights, suspect did not unambiguously invoke his right to attorney during questioning when he responded as follows to a detective’s statement that officers had probable cause – “I mean I guess I’ll just have to talk to a lawyer about it and, you know, I’ll mention that you guys are down here with a story.” State v. Gasteazoro-Paniagua, 173 Wn. App. 751 (Div. II, Feb. 20, 2013) – May 13:19

Under particular circumstances of case, re-advising arrestee of her Miranda rights after she invoked her attorney right, plus processing her in the presence of 77 marijuana bricks and photographing her with those bricks, did not constitute re-initiation of interrogation in violation of Miranda. United States v. Morgan, 717 F.3d 719 (9th Cir., June 3, 2013) – July 13:04 Note: On July 15, 2013, the same panel issued an amended opinion that

did not change the result or materially change the analysis. See ____ F.3d____, 2013 WL 3491418 (9th Cir., July 15, 2103) – October 13:13

Ninth Circuit holds that 1) actions by FBI agents at parole office add up to custody for purposes of Miranda, and 2) they breached Missouri v. Seibert rule by taking a deliberate two-step approach to Mirandizing. United States v. Barnes, 713 F.3d 1200 (9th Cir., April 18, 2013) – July 13:07

Un-Mirandized suspect's selective silence with no express assertion of Fifth Amendment rights during non-custodial and otherwise non-coercive questioning by government investigators may be used against defendant in a criminal prosecution. Salinas v. Texas, 537 U.S. ____, 133 S. Ct. 2174 (June 17, 2013) – August 13:02

Supreme Court directs Ninth Circuit to reconsider ruling in Sessoms v. Runnels that pre-Miranda statement by custodial suspect about attorney right either: (1) constituted invocation of Miranda rights even if ambiguous, or (2) was an unambiguous assertion of his attorney right. Grounds v. Sessoms, ____ U.S. ____, 132 S. Ct. 2886 (June 27, 2013) – September 13:04

Review by 11-judge panel ordered in case where voluntariness of a confession by a mildly mentally challenged suspect is at issue. On August 14, 2013, the Ninth Circuit vacated the opinion in United States v. Preston, 706 F.3d 1106 (9th Cir., Feb. 5, 2013) – October 13:07

Voluntary statement about fear of reprisal that custodial suspect made in interrogation that officers improperly continued after he had invoked his right to silence is held admissible to impeach his trial testimony that he was an unknowing courier of illegal drugs. United States v. Gomez, 725 F.3d 1121 (9th Cir., Aug. 6, 2013) – October 13:08

Spanish-language Miranda warnings that used an incorrect translation of “free” failed to “reasonably convey” suspect's Miranda right to an attorney without cost. United States v. Botello-Rosales, 728 F.3d 865 (9th Cir., July 15, 2013) – October 13:12

Miranda custody issue: under totality of circumstances, questioning in suspect's residence was not so coercive as to be “custodial.” State v. Rosas-Miranda, ____ Wn. App. ____, 309 P.3d 728 (Div. II, Sept. 17, 2013) – December 13:21

INTIMIDATING A PUBLIC SERVANT (RCW 9A.76.180)

Drunken tirade that includes expletives and threats to officer is insufficient under facts of this case to establish intimidating a public servant because evidence fails to establish attempt to influence his action. State v. Moncada, 172 Wn. App. 364 (Div. III, Dec. 11, 2012) – March 13:23

JUVENILES (Title 13 RCW)

Juvenile court has authority to issue a domestic violence no contact order for the statutory maximum time period, even if the result is that the no contact order will remain in effect beyond the juvenile's eighteenth birthday. State v. W.S., ____ Wn. App. ____, 309 P.3d 589 (Div. I, August 19, 2013) – October 13:21

KIDNAPPING, UNLAWFUL IMPRISONMENT AND RELATED OFFENSES (Chapter 9A.40 RCW)

No contact order that contains visitation provision is not a “parenting plan” for purposes of custodial interference. State v. Veliz, 176 Wn.2d 849 (March 7, 2013) – June 13:22

LEGISLATIVE UPDATES FOR WASHINGTON

Initial information about Initiative 502 relating to marijuana. – January 13:03

Notes informing that the LED’s 2013 Washington legislative update will be presented in a stand-alone document appearing on the CJTC LED Internet page around mid-July 2013. – April 13:03; May 13:03; June 13:02; July 13:02; August 13:02

Initiative 502 initial draft rules released – August 13:02

Initiative 502 final rules adopted – Dec 13:02

LOSS OF, DESTRUCTION OF, FAILURE TO PRESERVE EVIDENCE (See also topic “Due Process, including Brady Requirements on Government”)

Constitutional due process protection: When the government destroys evidence before trial, a showing of bad faith is required for dismissal but not for remedial adverse-inference jury instruction. United States v. Sivilla, 714 F.3d 1168 (9th Cir., May 7, 2013) – July 13:10

LURING (RCW 9A.40.090)

Split court holds that there was no enticement – and therefore it was not luring under RCW 9A.40.090 – for man riding by on bicycle to say to 9-year-old: “Do you want some candy? I’ve got some at my house”. State v. Homan, 172 Wn. App. 488 (Div. III, Dec. 18, 2012) – March 13:13 Status: The Washington Supreme Court is reviewing the case.

MEDAL OF HONOR AND PEACE OFFICERS’ MEMORIAL CEREMONY

Announcing Washington Law enforcement Medal of Honor & Peace Officers Memorial Ceremony is set for Friday, May 3, 2013 in Olympia at 1:00 p.m. – April 13:02

MEDICAL USE OF MARIJUANA ACT (Chapter 69.51A RCW) (See also topic “Uniform Controlled Substances Act”)

Court holds medical marijuana statute defense by commercial dispenser is valid under former statutory scheme. State v. Shupe, 172 Wn. App. 341 (Div. III, Dec. 11, 2012) – March 13:22

Common law medical necessity defense is not abrogated by chapter 69.51A RCW, Washington’s Medical Use of Marijuana Act. State v. Kurtz, ___ Wn.2d ___, 309 P.3d 472 (Sept. 19, 2013) – December 13:20

MURDER AND OTHER NON-TRAFFIC CRIMINAL HOMICIDES (Chapter 9A.32 RCW)

Evidence as to nature of and motive for assault held sufficient to support premeditation element of murder conviction. State v. Thompson, 169 Wn. App. 436 (Div. I, July 16, 2012) – January 13:23

Evidence of premeditation held sufficient to support first degree murder conviction in death of spouse; also, under a transferred intent theory, evidence also held to support second degree assault conviction for injury to daughter who had tried to block fatal attack. State v. Aguilar, 176 Wn. App. 264 (Div. III, Aug. 20, 2013) – November 13:24

Prosecutor may consider strength of evidence, along with facts and circumstances of crime, when determining whether to seek the death penalty. State v. McEnroe; State v. Anderson, ___ Wn.2d ___, 309 P.3d 428 (Sept. 5, 2013) – November 13:17

NECESSITY COMMON LAW DEFENSE

Common law medical necessity defense is not abrogated by chapter 69.51A RCW, Washington's Medical Use of Marijuana Act. State v. Kurtz, ___ Wn.2d ___, 309 P.3d 472 (Sept. 19, 2013) – December 13:20

OPEN COURTS (See also "Public Records Act" topic)

Once a competency evaluation is filed with the court, it is subject to the presumption of openness; redaction, rather than sealing entire evaluation, is not an abuse of discretion. State v. Chen, 178 Wn.2d 350 (Sept. 5, 2013) – November 13:16

PUBLIC RECORDS ACT (Chapter 42.56 RCW) (See also "Open Courts" topic)

Under Public Records Act, neither a sex offender sentencing alternative evaluation nor a related victim impact statement qualifies under the PRA exemption for investigative records. Koenig v. Thurston County, 175 Wn.2d 837 (Sept. 27, 2012) – January 13:12

Juvenile court's disclosure of special sex offender disposition alternative (SSODA) evaluation to local law enforcement agencies was mandated by statute; court also opines that evaluation would be exempt from public disclosure. State v. Sanchez, 169 Wn. App. 405 (Div. I, July 9, 2012) – January 13:24

City's search for records was reasonably calculated to uncover relevant records; purely private e-mails, from personal computers, were not public records within the meaning of the Public Records Act. Forbes v. City of Gold Bar, 171 Wn. App. 857 (Div. I, Nov. 13, 2012) – February 13:25

Public Record Act's one-year statute of limitations applies even where records are produced in a single installment and no exemptions are claimed; Division Two declines to follow Division One's opinion in Tobin v. Worden. Bartz v. Department of Corrections, 173 Wn. App. 522 (Div. II, Feb. 12, 2013) – May 13:23

Washington Supreme Court, among other things, interprets investigative records exemption of RCW 42.56.240(1) in case that arose out of Washington Attorney General's Office investigation under Consumer Protection Act of company's lending practices. Amerquest v. Office of the Attorney General, 177 Wn.2d 467 (May 9, 2013) – September 13:14

Five Supreme Court justices sign opinion that provides a detailed framework for analysis of Public Record Act questions, including an outline, a flowchart and a categorized listing of statutes; four justices sign concurring opinion that criticizes the lead opinion for addressing questions not before the Court. Resident Action Council v. Seattle Housing Authority, 177 Wn.2d 417 (May 9, 2013) – September 13:14

Inmate prevails in PRA lawsuit against the Department of Licensing on issues of (1) timeliness of response to request, (2) redacting of non-exempt information, and (3) adequacy and timeliness of explanations for redactions. Gronquist v. Department of Licensing, 175 Wn. App. 729 (Div. II, July 30, 2013) – October 13:24

RAPE AND OTHER SEX OFFENSES (Chapter 9A.44 RCW)

Child-rape defendant has burden of proving her defense that she was asleep while the child engaged in intercourse with her. State v. Deer, 175 Wn.2d 725 (Oct. 25, 2012) – January 13:11

“Forcible compulsion” element of indecent liberties supported by evidence of threat that was implied by past forcible abuses of child. State v. Gower, 172 Wn. App. 31 (Div. II, Nov. 20, 2012) – January 13:20

Knowledge that the person is incapable of consent by reason of being physically helpless is not an essential element of indecent liberties; evidence is held sufficient to convict defendant of indecent liberties. State v. Mohamed, 175 Wn. App. 45 (Div. I, May 28, 2013) – September 13:19

SEARCHES (See also “Arrest, Stop and Frisk”)

Border searches by federal agents

Border search: 8-3 majority creates electronics-device exception to Fourth Amendment border search exception by requiring reasonable suspicion to support forensic search of computer; Ninth Circuit identifies reasonable suspicion in light of the suspect’s molesting record, his pattern of travel, the password protection on his computer, and other facts. United States v. Cotterman, 709 F.3d 952 (9th Cir., March 8, 2013) – May 13:11

Community caretaking exception to search warrant requirement (See also “Emergency circumstances” and “Exigent circumstances” subtopics under this “Searches” topic)

Seizure, not mere social contact, occurred where officer’s accusation of criminal activity was followed by his request that teens voluntarily empty their pockets; also, community caretaking argument based on truancy law rejected because evidence fails to support it. State v. Guevara, 172 Wn. App. 184 (Div. III, Dec. 6, 2012) – February 13:09

Divided court upholds admissibility of evidence against State constitutional challenge under article I, section 7, but justices fail to reach a majority on whether that is (a) because the officers’ search was lawful, or (b) instead, because an exception to the Washington exclusionary rule applies; four Justices argue for an unusual community caretaking rule. State v. Smith, 177 Wn.2d 533 (June 6, 2013) – August 13:19

Consent exception to search warrant requirement

Where officers were searching for a domestic violence suspect reasonably suspected of being present in a third party’s residence, the reasonable suspicion means that Ferrier warnings were not required to obtain her consent to search residence for suspect. State v. Dancer, 174 Wn. App. 666 (Div. II, April 30, 2013) – July 13:19 Status: The Washington Supreme Court stayed consideration of defendant’s request for review while the Supreme Court

considered the Ferrier issue in State v. Ruem. On November 27, 2013, the Supreme Court ruled in Ruem, rejecting the defendant's argument that Ferrier warnings are mandated in this factual context, but ultimately ruling against the State on the consent and other issues in the case. The Washington Supreme Court decision in State v. Ruem will be reported in the January 2014 LED. As of the date of publication of this index, the Washington Supreme Court had not finally acted on the pending petition for review in Dancer.

Where State did not prove at hearing that officers had reasonable suspicion that the subject of an arrest warrant was present in a third party's residence when the officers asked the resident for consent to search her home for the warrant subject, the consent cannot be established to be voluntary because the officers did not give Ferrier warnings. State v. Westvang, 174 Wn. App. 913 (Div. II, May 21, 2013) – July 13:23 Status: The Washington Supreme Court stayed consideration of the State's request for review while the Supreme Court considered the Ferrier issue in State v. Ruem. On November 27, 2013, the Supreme Court ruled in Ruem, rejecting the defendant's argument that Ferrier warnings are mandated in this factual context, but ultimately ruling against the State on the consent and other issues in the case. The Washington Supreme Court decision in State v. Ruem will be reported in the January 2014 LED. As of the date of publication of this index, the Washington Supreme Court had not finally acted on the pending petition for review in Westvang.

Border patrol agent's answering of suspect's cell phone and passing himself off as suspect exceeded scope of suspect's consent to search cell phone; consent to search phone is not consent to answer calls. United States v. Lopez-Cruz, 730 F.3d 803 (9th Cir., Sept. 12, 2013) – December 13:02

Emergency circumstances exception to search warrant requirement (See also "Community Caretaking" and "Exigent circumstances" subtopics under this "Searches" topic)

Warrantless entry into curtilage (high-fence-and-gate-enclosed front yard) in gang neighborhood in hot pursuit of suspect where probable cause to arrest was for only disobeying order to stop was not justified under either exigent circumstances or emergency exceptions to the warrant requirement. Sims v. Stanton, 706 F.3d 954 (9th Cir., Dec. 3, 2012, amended Jan. 16, 2013) – February 13:03; March 13:04. Note: The January 2014 LED will contain an entry reporting the United States Supreme Court's reversal of the Ninth Circuit decision in Stanton on the issue of qualified immunity.

Divided court upholds admissibility of evidence against State constitutional challenge under article I, section 7, but justices fail to reach a majority on whether that is (a) because the officers' search was lawful, or (b) instead, because an exception to the Washington exclusionary rule applies. State v. Smith, 177 Wn.2d 533 (June 6, 2013) – August 13:19

Entry of private premises to arrest (Payton/Steagald rules)

Exclusionary rules of federal and State constitutions

Divided court upholds admissibility of evidence against State constitutional challenge under article I, section 7, but justices fail to reach a majority on whether that is (a) because the officers' search was lawful, or (b) instead, because an exception to the Washington exclusionary rule applies. State v. Smith, 177 Wn.2d 533 (June 6, 2013) – August 13:19

Execution of a search warrant, including frisking or searching persons present

Fourth Amendment authority under Michigan v. Summers to secure occupants found in immediate vicinity of the premises when execution of search warrant begins does not authorize seizing them if they have left immediate vicinity before execution of warrant begins. Bailey v. United States, ___ U.S. ___, 133 S. Ct. 1031 (Feb. 19, 2013) – May 13:03

Exigent circumstances exception to search warrant requirement (See also “Community Caretaking” and “Emergency circumstances” subtopics under this “Searches” topic)

Scientific fact of natural dissipation of alcohol in bloodstream is not per se exigency that justifies non-consenting blood test in criminal cases where driving under the influence is an element of the crime. Missouri v. McNeely, ___ U.S. ___, 133 S. Ct. 1552 (April 17, 2013) – June 13:03

Impound/inventory exception to search warrant requirement

Ninth Circuit issues an amended opinion in United States v. Cervantes deleting its ruling and analysis on pretext but continuing to rule against the vehicle impound based on (1) failure of the impound of the safely parked vehicle to satisfy community caretaking rationale, and (2) occurrence of the impound-inventory prior to the arrest of the vehicle operator. U.S. v. Cervantes, 703 F.3d 1135 (9th Cir., Nov. 28, 2012) – February 13:07

Impound-inventory holdings: (1) impoundment of vehicle was justified by combination of hazard, driving while license suspended arrest, and exhaustion of reasonable alternatives; (2) inventory was not pretextual; and (3) consent is not generally a requirement for inventory under Washington constitution’s article I, section 7. State v. Tyler, 177 Wn.2d 690 (May 30, 2013) – August 13:08

Incident to arrest (MV) exception to search warrant requirement

Court accepts State’s concession that, under facts that arose in 2007, State v. Snapp controls against the State on vehicle search-incident-to-arrest issue. State v. Louthan, 175 Wn.2d 751 (Oct. 25, 2012) – January 13:12

Incident to arrest (person and/or effects) exception to search warrant requirement

Under the totality of the circumstances, officer acted lawfully under federal and state constitutional doctrines for search incident to arrest when he searched a laptop bag that was taken from the arrestee, who at the time of the search was in handcuffs standing about a car’s length away from the bag. State v. MacDicken, 171 Wn. App. 169 (Div. I, Oct. 8, 2012) – February 13:16 Status: The Washington Supreme Court is reviewing the case.

Search incident to arrest: Officer-safety concerns justify the search of defendant’s backpack, which was between his feet at point of seizure and was accessible to the cuffed arrestee at point of search; Arizona v. Gant does not dictate a different result; Division Two distinguishes Byrd on facts of this case. State v. Ellison, 172 Wn. App. 710 (Div. II, Jan. 8, 2013) – March 13:17 Status: Petition for review by defendant is pending in the Washington Supreme Court; the Supreme Court has stayed action on the petition pending its resolution of the MacDicken case (see entry re MacDicken immediately above in this subtopic).

Vehicle stop justified by reasonable suspicion both (1) that registered owner was committing continuing offense of failure to transfer title, and (2) that passenger was

subject of arrest warrant. Also, searching pockets of handcuffed arrestee moments after his lawful custodial arrest held per se justified by fact of the custodial arrest alone. State v. Bonds, 174 Wn. App. 553 (Div. II, April 23, 2013) – July 13:15 Status: Petition for review denied by Washington Supreme Court.

Timely warrantless search of purse incident to arrest upheld simply because purse was in actual possession of arrestee at time of arrest, but court warns that Washington constitution does not authorize search incident based merely on constructive possession of an item. State v. Byrd, ___ Wn.2d ___, 310 P.3d 793 (Oct. 10, 2013) – December 13:12

Privacy expectations, scope of constitutional protections (See also “Open view” subtopic under this “Searches” topic)

Trespass-based 4th amendment theory holds that police exceeded scope of home resident’s implied invitation for visitors to come onto front porch where officer and K-9 went onto porch, not for the purpose of talking to the resident, but instead for the objectively manifested purpose of conducting search, by having K-9 sniff for marijuana grow. Florida v. Jardines, ___ U.S. ___, 133 S. Ct. 1409 (March 26, 2013) – June 13:06

Maryland statute authorizing collection of DNA from all adults arrested for serious felonies survives Fourth Amendment constitutional challenge. Maryland v. King, ___ U.S. ___, 133 S. Ct. 1958 (June 3, 2013) – July 13:03

Trial court erred in allowing prosecutor to argue that refusal to voluntarily submit to warrantless DNA test is evidence of defendant’s guilt. State v. Gauthier, 174 Wn. App. 257 (Div. I, April 1, 2013) – July 13:24

Divided court upholds admissibility of evidence against State constitutional challenge under article I, section 7, but justices fail to reach a majority on whether that is (a) because the officers’ search was lawful, or (b) instead, because an exception to the Washington exclusionary rule applies; Chief Justice Madsen argues for overruling of State v. Jorden, 160 Wn.2d 121 (2007) July 07 LED:18, but no other Justice joins that view. State v. Smith, 177 Wn.2d 533 (June 6, 2013) – August 13:19

Probable cause, including staleness

Split court holds affidavit for search warrant did not establish probable cause to search because, among other things, civilian source was not shown to be able to identify marijuana plant. State v. Shupe, 172 Wn. App. 341 (Div. III, Dec. 11, 2012) – March 13:22

Canine-based probable cause: Proof of results of field work not mandatory for determining probable cause; totality of circumstances must be considered. Florida v. Harris, ___ U.S. ___, 133 S. Ct. 1050 (Feb. 19, 2013) – May 13:07

Court holds that affidavit does not add up to probable cause to search home computer for child porn in describing only: (1) suspect’s 10-year-old convictions as juvenile for child molesting and possessing “obscene” materials; (2) his recent alleged act of child molesting; and (3) detective-affiant’s training and experience and conclusions. United States v. Needham, 718 F.3d 1190 (9th Cir., June 14, 2013) – August 13:07

Where prior affidavit and search warrant for other residences are referenced but not attached or incorporated in a subsequent application for a warrant to search another

residence for evidence, the affidavit in the prior application and the issuance of the prior warrant cannot be used to support the subsequent application; also, officer's experience-and-training-based conclusions need foundation. United States v. Underwood, 728 F.3d 1076 (9th Cir., Aug. 6, 2013) – October 13:06

Probable cause for search not negated solely by canine's failure to fully complete his indication. United States v. Thomas, 726 F.3d 1086 (9th Cir., Aug. 8, 2013) – November 13:03

Resources of search and seizure law (see also topic of "CJTC LED Internet Page")

Note: "Survey of Washington Search and Seizure Law: 2013 Update" Seattle University Law Review article updated by two Washington Supreme Court Justices with assistance from law students at Seattle University. – November 13:03

Strip searches of arrested persons being booked into jail or holding facility

3 holdings: (1) Terry seizure of witness/suspect was reasonable; (2) arrest was lawful under RCW 10.31.100 because officer had probable cause as to harm to person and/or taking of personal property; (3) but strip search at jail violated chapter 10.79 RCW because suspect's mere nervousness did not justify it, and there was no supervisor approval. State v. Barron, 170 Wn. App. 742 (Div. III, Sept. 18, 2012) – January 13:14

SENTENCING

Jury finding of gang-purposes of conduct held supported. State v. Moreno, 173 Wn. App. 479 (Div. III, Feb. 12, 2013) – April 13:15

SEXUALLY VIOLENT PREDATOR LAW

Media-dubbed "South Hill Rapist" loses challenge to his commitment as a sexually violent predator. In re the Detention of Kevin Coe, 175 Wn.2d 482 (Sept. 27, 2012) – January 13:13

SIXTH AMENDMENT RIGHT TO CONFRONTATION

Assault victim's statement to medical personnel at hospital in presence of officer who had previously questioned her at her home and who was collecting evidence from her at the hospital held to be testimonial for Sixth Amendment confrontation right purposes. State v. Hurtado, 173 Wn. App. 592 (Div. I, Feb. 19, 2013) – June 13:23

SIXTH AMENDMENT RIGHT TO CONTROL ONE'S DEFENSE

Giving affirmative defense instruction to the jury, over the defendant's objection, violates the defendant's Sixth Amendment right to control his defense. State v. Coristine, 177 Wn.2d 533 (May 9, 2013) – August 13:22

STALKING (RCW 9A.46.110)

Court of Appeals rejects vagueness and overbreadth constitutional challenges to felony stalking statute. State v. Bradford, 175 Wn. App. 912 (Div. I, August 12, 2013) – October 13:23

THEFT AND RELATED CRIMES (Chapter 9A.56 RCW)

Underreporting taxable revenue and underpaying taxes does not establish “theft” of gambling revenues. State v. Lau, 174 Wn. App. 857 (Div. I, May 20, 2013) – September 13:24

Legislature intended to punish unlawful possession of a controlled substance separately from theft of the same substance; defendant may be convicted of both. State v. Denny, 173 Wn. App. 805 (Div. II, Feb. 20, 2013) – May 13:22

TRAFFIC (Title 46 RCW)

Although city clerks have a mandatory duty to transmit ordinance to the county auditor, the court denies action seeking to compel city clerk to do so because it would have been useless under the facts of this case (traffic camera initiative). Eyman v. McGehee, 173 Wn. App. 684 (Div. I, Feb. 19, 2013) – July 13:25

Physical control defense for car moved safely off the roadway does not apply where defendant neither moved the car nor directed another person to move the car to the safe location. City of Yakima v. Godoy, 175 Wn. App. 233 (Div. III, May 7, 2013) – September 13:16

For crimes with driving under influence as an element, knowledge of harmful side effects of prescription drugs need not be proven by the State, but lack of knowledge may be relevant to affirmative defense. State v. Dailey, 174 Wn. App. 810 (Div. I, May 13, 2013) – September 13:24

UNIFORM CONTROLLED SUBSTANCES ACT AND OTHER DRUG LAWS (Chapter 69.50 RCW) (See also topics “Forfeiture Law”, “Medical Use of Marijuana Act”)

Initial information about Initiative 502 relating to marijuana. – January 13:03

Announcement: Section 21 of Initiative 502, which prohibits certain conduct relating to opening a package of marijuana or consuming marijuana in view of the general public, has now been codified as RCW 69.50.445. – March 13:03

Announcement: The Criminal Justice Training Commission has revised its Narcotic Detection Canine Performance Standards to remove marijuana as a required odor. – March 13:03

Legislature intended to punish unlawful possession of a controlled substance separately from theft of the same substance; defendant may be convicted of both. State v. Denny, 173 Wn. App. 805 (Div. II, Feb. 20, 2013) – May 13:22

Initiative 502 initial draft rules released – August 13:02

Note regarding DOJ Guidance on Implementation of Initiative 502. – October 13:03

RCW 69.53.010(1)’s bar to using premises for certain drug purposes held not applicable where tenant merely used rented room to sell drugs. State v. Davis, ___ Wn. App. ___, 2013 WL 4746819 (Div. II, Sept. 4, 2013) – November 13:23

Initiative 502 final rules adopted – December 13:02

UNLAWFUL PRACTICE OF LAW (RCW 2.48.180)

Unlawful practice of law statute applies to both lawyers and non-lawyers. State v. Janda, 174 Wn. App. 229 (Div. I, Oct. 1, 2012, publication ordered April 9, 2013) – June 13:25

WITNESS TAMPERING (Chapter 9A.72 RCW)

Evidence that defendant was attempting to induce witness not to appear for third party's trial is sufficient evidence to prove crime of witness tampering. State v. Andrews, 172 Wn. App. 703 (Div. III, Jan. 8, 2013) – April 13:21

INTERNET ACCESS TO COURT RULES & DECISIONS, TO RCWS, AND TO WAC RULES

The Washington Office of the Administrator for the Courts maintains a website with appellate court information, including recent court opinions by the Court of Appeals and State Supreme Court. The address is [<http://www.courts.wa.gov/>]. Decisions issued in the preceding 90 days may be accessed by entering search terms, and decisions issued in the preceding 14 days may be more simply accessed through a separate link clearly designated. A website at [<http://legalwa.org/>] includes all Washington Court of Appeals opinions, as well as Washington State Supreme Court opinions. The site also includes links to the full text of the RCW, WAC, and many Washington city and county municipal codes (the site is accessible directly at the address above or via a link on the Washington Courts' website). Washington Rules of Court (including rules for appellate courts, superior courts, and courts of limited jurisdiction) are accessible via links on the Courts' website or by going directly to [http://www.courts.wa.gov/court_rules/].

Many United States Supreme Court opinions can be accessed at [<http://supct.law.cornell.edu/supct/index.html>]. This website contains all U.S. Supreme Court opinions issued since 1990 and many significant opinions of the Court issued before 1990. Another website for U.S. Supreme Court opinions is the Court's own website at [<http://www.supremecourt.gov/opinions/opinions.html>]. Decisions of the Ninth Circuit of the U.S. Court of Appeals since September 2000 can be accessed (by date of decision or by other search mechanism) by going to the Ninth Circuit home page at [<http://www.ca9.uscourts.gov/>] and clicking on "Decisions" and then "Opinions." Opinions from other U.S. circuit courts can be accessed by substituting the circuit number for "9" in this address to go to the home pages of the other circuit courts. Federal statutes are at [<http://www.law.cornell.edu/uscode/>].

Access to relatively current Washington state agency administrative rules (including DOL rules in Title 308 WAC, WSP equipment rules at Title 204 WAC, and State Toxicologist rules at WAC 448-15), as well as all RCW's current through 2007, is at [<http://www.leg.wa.gov/legislature>]. Information about bills filed since 1991 in the Washington Legislature is at the same address. Click on "Washington State Legislature," "bill info," "house bill information/senate bill information," and use bill numbers to access information. Access to the "Washington State Register" for the most recent proposed WAC amendments is at this address too. In addition, a wide range of state government information can be accessed at [<http://access.wa.gov>]. The internet address for the Criminal Justice Training Commission (CJTC) LED is [<https://fortress.wa.gov/cjtc/www/led/ledpage.html>], while the address for the Attorney General's Office home page is [<http://www.atg.wa.gov>].

The Law Enforcement Digest is edited by Assistant Attorney General Shannon Inglis of the Washington Attorney General's Office. Questions and comments regarding the content of the LED should be directed to AAG Inglis at Shannon.Inglis@atg.wa.gov. Retired AAG John Wasberg provides assistance to AAG Inglis on the LED. LED editorial commentary and analysis of statutes and court decisions express the thinking of the editor and do not necessarily reflect the views of the Office of the Attorney General or the CJTC. The LED is published as a research source only. The LED does not purport to furnish legal advice. LEDs from January 1992 forward are available via a link on the CJTC Home Page [<https://fortress.wa.gov/cjtc/www/led/ledpage.html>]
